



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 31, 1994

Mr. Robert A. Schulman
Schulman, Walheim, Heidelberg & Acevedo
745 East Mulberry, Suite 700
San Antonio, Texas 78212

OR94-528

Dear Mr. Schulman:

As counsel for the Alamo Community College District, Palo Alto College, you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26986.

The Alamo Community College District, Palo Alto College, received an open records request for certain records that you contend may be withheld from the public pursuant to the Open Records Act, section 552.103(a) of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). *See* Open Records Decision No. 386 (1983) (holding pendency of complaint before Equal Employment Opportunity Commission indicates substantial likelihood of litigation sufficient to satisfy former section 3(a)(3), V.T.C.S. article 6252-17a, predecessor of section 552.103(a). The requested records may therefore be withheld.

In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the anticipated litigation have seen or had access to any of the information in these records,

there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", with a stylized flourish at the end.

Kay Guajardo
Special Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 26986

Enclosures: Submitted documents

cc: Mr. D. Dwain McInnis
Palo Alto College
1400 West Villaret Street
San Antonio, Texas 78224
(w/o enclosures)